

In re) Fair Hearing No. 21,260
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Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Economic Services establishing an overpayment of Food Stamps. The issue is whether the Department can assess an overpayment amount if the recipient is not at fault for the overpayment.

1. The petitioner is a recipient of Food Stamps. Her son lives with her and is working. The Department does not dispute that she reported her son's income in a timely manner. The Department further admits that it erroneously failed to consider this income in calculating the petitioner's Food Stamps.

2. There is no dispute that the petitioner has received a total of \$161 in Food Stamps that she would not have been eligible for had the Department correctly counted the income the household received during this period.

3. The petitioner maintains that she made several inquiries of her worker regarding her son's income, and that she should not be held liable for this overpayment.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner does not dispute that earnings her son received have resulted in an overpayment of \$161 in Food Stamps. The Department concedes that the petitioner was not at fault in reporting her household income and that the overpayment is the result of the Department's error.

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). Even if the overpayment can be determined to have been the Department's fault, the regulations provide: "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action . . ." F.S.M. § 273.18(a)(2). The Department is required to "take action to establish a claim against any household that received an over issuance due to an . . . administrative error if . . .

[a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment" so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii). If the household is continuing to receive Food Stamps, the required repayment is the greater of ten percent of the household's monthly allotment or \$10 per month when the claim is based on administrative error—twenty percent or \$10 when caused by household error. F.S.M. § 273.18(g)(4).

Inasmuch as the Department's decision is in accord with the above regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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